IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

WP(C).No. 30705 of 2007(E)

PETITIONERS:

1. **BHAGYALAKSHMY AMMA,**
   D/O.PALLAKKATTIL JANAKI AMMA,
   SREENARAYANAPURAM VILLAGE,
   KODUNGALLUR TALUK.

2. **SREEDHARAN,**
   S/O.PALLAKKATTIL BHAGYALAKSHMY,
   -DO- -DO- -DO-

3. **UNNI @ BHEESHMAR,**
   S/O.PALLAKKATTIL JANAKI AMMA,
   -DO- -DO- -DO-

4. **KASTHURI, D/O.PALLAKKATTIL BHAGYALAKSHMY**
   -DO- -DO- -DO-

BY ADV. SRI.K.G.BALASUBRAMANIAN

RESPONDENTS:

1. **VIJAYALAKSHMI,**
   D/O.PINDIYATH SARASWATHI AMMA,
   PANANGADU DESOM, SREENARAYANAPURAM VILLAGE,
   PANANGAD P.O., KODUNGALLUR TALUK,
   PIN - 680 665.

2. **BALAKRISHNAN,**
   S/O.AYYALATH KARTHYAYANI AMMA,
   -DO- -DO- -DO-

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.N.KRISHNAN, J

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W.P.(C) No.30705 OF 2007

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Dated this the 17th day of October 2007

JUDGMENT

This writ petition is filed against the judgment of the Addl.Sub court, Irinjalakkuda in C.M.A.No.14 of 2007. The said C.M.A. was preferred against the order of the Munsiff's Court, Kodungallur in I.A.No.237/07 in O.S.No.129/2007. The suit is one relating to a pathway which is described as C schedule. A Commissioner inspected the property and submitted that the southern end of the disputed pathway where it starts has only a width of 3 ft.. The learned Munsiff found fault with the plaintiffs rightly for suppressing the pendency of a suit O.S.No.426/2006. They are the defendants in the suit and in their counter statement, they have stated that the disputed pathway has only a width of 3 ft. But according to them, in the present suit, the width is 6 ft. The learned Munsiff held that those who seek equity must come with clean hands. It is a principle well recognized also. The learned Sub Judge while disposing of the C.M.A. agreed with the observations of the learned Munsiff, but held that for proper trial and disposal of the suit, the plaint C schedule pathway has to be protected.

Therefore, she directed both parties to maintain status quo, as seen from Ext.C1 Commissioner's report. Learned counsel for the petitioners submits that the appellate court should not have interfered with the decision of the court below. Two suits are filed and in both the suits, the subject matter is a pathway. The dispute centers around the width of a pathway. It is true that there is suppression of facts by the plaintiffs in the suit. But, it has to be remembered that for adjudicating the matter, the subject matter has to be preserved. So, what the court below has directed is only to preserve the status quo of the property till a final decision is taken. I cannot find fault with the said approach made by the learned Sub Judge. But, when ultimately the suit is decided and when the court finds that there had been suppression of material facts and the plaintiffs in the suit have not come with clean hands, injunction being a discretionary remedy, the court may take stock of the entire situation. For the time being, let the property be preserved as directed by the Sub Judge and I direct the learned Munsiff to dispose of the matter, as expeditiously as possible, within a period of 3 months from today, after affording equal opportunity to both sides to substantiate their

contentions.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-